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PROGRESS REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE IN-DEPTH EVALUATION OF THE TECHNICAL COOPERATION ACTIVITIES ON COMPETITION LAW AND POLICY

Report by the UNCTAD secretariat

SUMMARY

In order to implement the recommendations made in the evaluation report, the secretariat has developed a strategy which essentially focused on: (a) activities which are sustainable and can make an impact; (b) alternative sources and ways of mobilizing human and financial resources; and (c) the development of networking among high-level institutions in each country, thus creating synergies among their competencies and capacities for implementation and follow-up. This progress report contains a presentation of the measures taken by the secretariat over the last 10 months.

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Introduction

1. At its thirty-fourth session in September-October 1999, the Working Party on the Medium-term Plan and the Programme Budget welcomed the evaluation of the programme of technical cooperation activities on competition law and policy (TD/B/WP/119), agreed with the recommendations contained therein, and requested "the secretariat to implement them, taking into consideration the comments made by the members of the Working Party, in particular regarding paragraph 89 of the evaluation";[1] and invited "the Secretary-General of UNCTAD to report at the autumn session of the Working Party in the year 2000 on the implementation of the recommendations arising from the evaluation report".

2. The present report was prepared in response to those requests. It describes the strategy adopted by the secretariat since October 1999 for the implementation of the recommendations contained in the evaluation report, gives an account of the specific actions and activities undertaken with reference to the setting of priorities, resource mobilization, and relationships with other programmes; and reviews the various activities implemented in response to requests from member countries.

IMPLEMENTATION OF THE RECOMMENDATIONS CONTAINED IN THE IN-DEPTH EVALUATION REPORT

3. In order to implement the recommendations made in the evaluation report, the secretariat has developed a strategy which essentially focuses on: (a) activities that are sustainable and can make an impact; (b) alternative sources and ways of mobilizing human and financial resources; and (c) the development of networking among high-level institutions in each country, thus creating synergies among their competencies and capacities for implementation and follow-up.

4. The implementation of the recommendations adopted by the Working Party as well as its future orientations were influenced by a number of factors and developments that have intervened since then: the Plan of Action of UNCTAD X, which reinforced and expanded the secretariat work on competition policy, particularly in the area of capacity- and institution-building; the preparatory process for the WTO Ministerial Conference in Seattle and the follow-up to future negotiations, which focused the attention of developing member States on the need to clarify and elucidate principles, concepts and policy issues relating to the interface between competition policy and development and their ability to participate effectively in the international negotiations; the request addressed by the IGE on Competition Law and Policy to the Secretary-General of UNCTAD to prepare for the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, which is scheduled to take place from 25 to 29 September 2000; the increase in the number of requests from developing and least developed countries for assistance in the preparation of national competition legislation, and an increase in the commitment of additional funds from bilateral donors for technical cooperation activities relating to competition policy.

A. Priority areas for technical assistance[2]

5. One core recommendation of the evaluation report called for UNCTAD to place due emphasis on how best to establish independent competition authorities, assist with the training of staff and provide training in the implementation of the law. In this connection, UNCTAD has focused its activities on:

(a) Requests from countries that have adopted competition legislation and seek advice on setting up a competition authority; this includes training of officials responsible for the control of anti-competitive practices, as well as involving the establishment of training workshops and/or on-the-job training with competition authorities in countries that have experience in the field of competition;

(b) Requests from countries that have already adopted competition legislation, have built up experience in the control of anti-competitive practices and wish to discuss their experiences in specific cases as well as to exchange information. Seminars would need to be organized for such exchanges between competition authorities (see below);

(c) Requests from countries that wish to revise their competition legislation, and therefore seek expert advice from competition authorities in other States so as to amend their laws in the most effective manner possible.

6. Thus, UNCTAD assisted Thailand, Mauritania, Madagascar, Vietnam and Ecuador in preparing, elaborating or reviewing national competition and/or consumer protection legislation. In particular, in the case of Madagascar, UNCTAD prepared a report proposing amendments to the draft competition law of this country. UNCTAD has also provided advisory services to Thailand in drafting guidelines for the operational procedures of its competition authority. In addition, UNCTAD has prepared a report assessing the CIS countries' experience in implementing competition policy. The report was presented at a regional meeting in Kiev, Ukraine, in July 2000. UNCTAD also advised the Task Force of the CARICOM countries which were preparing the revision of Protocol IX on competition policy and consumer protection issues. A final report on a possible common competition policy for the region is being considered by the CARICOM secretariat. Furthermore, the work on the elaboration of a common approach to competition policy for the member States of the Common Market for Eastern and Southern Africa (COMESA) is being pursued with the assistance of UNCTAD and the EU.

7. A national workshop on the implementation of the Zambia Competition Act was held in July 2000. The workshop's objectives were to enhance the capacity- and institution-building of the Zambia Competition Commission (ZCC) as well as to contribute towards the educational process which the ZCC had launched with a view to creating a competition culture in Zambia.

8. A national seminar on competition law and policy was organized in December 1999 in Madagascar with a view to enabling government officials and representatives of private business to understand the implications of the draft competition law once adopted and how it should be applied. Following the seminar, consultations were held between UNCTAD and personnel designated by the Government on the finalization of the draft law.

9. The other area of priority, which was emphasized in the evaluation, was the need for UNCTAD to continue to organize national seminars for countries that have not yet passed competition or consumer protection laws. In these cases, progress has been made by the secretariat in responding to requests from member countries. In particular, UNCTAD has continued to extend assistance to:

(a) Countries without any competition legislation, which request information about anti-competitive practices, their existence and possible adverse effects on their respective economies. This has involved studies of market structure, and of the coherence of company and trade laws;

(b) Countries without competition legislation, which request introductory seminars for an audience including government officials and academics, as well as business and consumer associations;

(c) Countries in the process of drafting competition legislation, which seek advice in doing so, and also request information on such legislation in other countries.

10. In the light of the increasing number of requests for assistance, in particular in the context of the proximity of the Fourth Review Conference, most of these activities were implemented in a cost-effective manner through regional seminars and workshops. In Africa, a Regional Seminar on Competition Policy, Trade and Development was jointly organized by UNCTAD, COMESA (Common Market for Eastern and Southern Africa) and the Zambia Competition Commission, in Lusaka, Zambia. The purpose of the seminar was to discuss the issues of importance in competition policy with regard to regional development and integration among the COMESA member countries; the interrelationship between the objectives and instruments of trade investment and competition policies; the relevance to COMESA of other integration groupings' experiences with a common competition policy; and the role of cooperation and communication in competition law and policy.

11. In cooperation with the Governments of Morocco and Zambia, UNCTAD is organizing Regional Seminars on Competition Law and Policy for African countries to be held in Casablanca on 18-19 July and in Livingstone on 26-27 July 2000 respectively. These regional meetings are part of the preparatory process for the Fourth United Nations Review Conference of the Set of Principles.

12. In Asia, in cooperation with the Monopolies and Restrictive Trade Practices (MRTP) Commission of India and Consumer Unity and Trust Society (CUTS) also of India, UNCTAD held a Regional Seminar on Competition Policy for the Asia-Pacific Region (Jaipur, India, 13-15 April 2000). The Seminar was attended by participants from competition authorities, ministries, business associations and consumer groups from Pakistan, Nepal, Hong Kong (China), Australia, Japan and the host country. The Seminar discussed specific issues related to participating countries' experiences, instruments of cooperation in the competition area, problems of competition and international trade as well as competition and multilateral action for development. It also had an opportunity of discussing the results of UNCTAD X, and adopted a Declaration containing specific recommendations for action by the Fourth United Nations Review Conference on the Set of Principles.

13. In Latin America, a subregional workshop for CARICOM and its member States on competition law and policy was held on 12-13 October 1999 in Port-of-Spain, Trinidad and Tobago. It was organized by UNCTAD jointly with the CARICOM secretariat, the EU, the University of the West Indies and the Institute of Social and Economic Research. The objective of the workshop was to strengthen Caribbean countries' knowledge of the main principles and applications of competition law and policy. The workshop also considered the scope and rules of competition applicable in regional integration agreements, and focused on the issues of global and hemispheric trade, liberalization and competition.

14. In cooperation with the Costa Rican Commission for the Promotion of Competition, and with the Economic Commission for Latin America and the Caribbean (ECLAC), a Regional Seminar on Competition Law and Policy is in course of preparation by UNCTAD, to be held in San José from 30 August to 1 September 2000.

15. In cooperation with the Antimonopoly Committee of Ukraine and the European Commission, UNCTAD is involved in the preparation of the Regional Conference on Competition Policy for CIS countries and countries of Central and Eastern Europe in Kiev, scheduled for 13-14 July 2000. A regional meeting for the Commonwealth of Independent States (CIS) Antimonopoly Bodies' Leadership was held in Moscow in October 1999.

B. Resources and funding

16. In view of the increase in the number of requests from beneficiary countries for national and regional seminars and advisory missions, UNCTAD has been able to mobilize additional financial and human resources for planned activities over the next 18 months. While the increase in financial commitments from some bilateral donors, the use of international experts, and cooperation with other organizations, including competition agencies of developed countries, will greatly assist in the attainment of the objectives of the Set, it is apparent that many requests for assistance cannot be met, given the human and financial resources currently available in this aspect of UNCTAD's work.

17. The start-up phase of technical cooperation programmes depends largely on financial contributions from donors. Beneficiary countries are also contributing to the implementation of such activities.

18. As far as financial resources are concerned, the total expenditure on technical assistance in the area of competition policy has averaged US$ 400,000 a year. The major donors are the Netherlands, Norway, Germany, Italy, France and the United Nations Development Programme (UNDP). The increased commitment in funding for the years 2000 and 2001 should enable greater use to be made of consultants and experts to meet some of the requests received from beneficiary countries.

C. Networking of competition institutions

19. Sustainability of technical cooperation activities calls for developing the networking of competition institutions, which rely on the competencies of high-level agencies in each country, thus creating synergies among their competencies and capacity for implementation and follow-up. The networking entails the following concrete measures:

- developing a network of institutions that provide training programmes in the field of competition policy in developing countries;

- increasing partnerships through enhanced cooperation with other international organizations and institutions working in the field of competition policy; and the expansion of relations with national higher education institutions in developed and developing countries;

- reinforcing the institutions that have adopted competition law;

- developing a regular exchange of information, courses and experiences among training institutions;

- updating and producing training packages that meet the needs of persons involved in the implementation and enforcement of competition law and policy; this also involves closer cooperation between the various divisions of UNCTAD in order to provide a rigorous follow-up of projects and optimal teaching materials;

- organizing national and regional seminars, workshops and training courses in the institutions that are members of the network.

D. Training and relationships with other related programmes

20. Another core recommendation relates to the design and production of new training manuals on the formulation and implementation of competition law and policy. Comprehensive and detailed training material has been prepared, and is being tested and validated in selected countries before publication. The material includes detailed modules on the various aspects of the formulation and implementation of competition law and policy, including case studies as well as a User's Manual for the training of trainers. This material will also be used for distance learning and be made available through the Internet. A description of the training modules is provided in Annex I to this report.

21. Progress has also been made in organizing joint training seminars and conferences with specialized institutions. This summer, a second one-week course (19-23 June 2000), on international trade dispute settlements and competition policy, was organized in cooperation with the University of Geneva Faculty of Law and the International Academy of Public Law. The summer course was held in various Geneva-based international organizations (UNCTAD, WTO, WIPO, ILO, etc. and the University of Geneva), and was attended by over 150 participants from the capitals and missions to the United Nations and WTO. It is intended to hold a similar course next year focused on Competition Policy and Intellectual Property Rights.

22. The search for synergies has led the secretariat to seek cooperation arrangements with regional institutions that have the capacity for training and follow-up. UNCTAD has joined a steering committee, composed of the Australian Competition and Consumer Protection Commission, the APEC secretariat, and the Korean and Japanese Fair Trading Commissions, which aims at establishing a resource centre for the ASEAN countries that would use the existing capacities in the region and in other parts of the world.

D. Other recommendations of the evaluation exercise

23. A list of focal points in the capitals has been drawn up with a view to ensuring that the relevant authorities in the capital receive invitations to participate in national and regional meetings in good time. It is intended to send such communications directly to the relevant authorities, with a copy to the country's representative in Geneva.

24. Progress has also been made in the publication of reports of national and regional seminars, with the aim of providing the most recent information and thinking on competition law and policy in developing countries. These reports have been published in a new series on technical issues.

25. The UNCTAD Web site on competition has been redesigned and updated with the inclusion of new material and links to competition-related sites.[3]

Notes

[1] Report of the Working Party on the Medium-term Plan and the Programme Budget on its thirty-fourth session, paragraphs 1 and 2 (TD/B/46/9, TD/B/WP/23), 13 March 2000.

[2] Paragraph 85 of the evaluation report.

[3] http://www.unctad.org/en/subsites/cpolicy/cpindex.htm.

ANNEX I

Course on "The Formulation of a Competition Law and Policy"

OBJECTIVES:

- Increase the awareness of the participants regarding the necessity of developing or adapting existing competition law and policy. Fundamental data underlying competition law and policy will be explained in relation to other branches of political economy, in the context of a state of law. Moreover, means and methods for controlling various aspects of competition legislation will be described;

- Enable participants who are knowledgeable about the state of evolution of their institutional and juridical structures to compare existing legislation with legislation that will be necessary in order to propose the implementation of necessary reforms in the field of competition law and policy.

TARGET POPULATION:

- Political decision-makers: Ministers and Secretaries of State and their Cabinet Directors in charge of economy, trade, finance, justice and consumer protection;

- People in charge of political decisions related to the economy: executive officers of economic and trade administrations and their direct deputies;

- Judges in charge of ensuring conformity between new legislation to be developed and the existing legislation: they may be from supreme courts, parliamentarians, high-level jurisconsults (university deans, barristers), as well as magistrates/judges of jurisdictions possibly subject to litigation/disputes;

- Managers and officers from the private sector in those countries where they are powerful and representative (employers' associations and trade unions, chambers of commerce);

- Officers in charge of the application of rules regarding competition policy from various administrations related to the economy, commerce, finance, justice/law and consumer protection.

DURATION:

- Two days

MODULES:

- Module 1: Introduction
- Module 2: The objectives and economic foundations of competition law and policy
- Module 3: Juridical instruments
- Module 4: Institutions in charge of the policy and application of competition law
- Module 5: Conclusions and plan of action

ACTIVITIES FOLLOWING THE SEMINAR:

- Brainstorming of current practices that need to be reformed or modified. The instruments and means required (budget, personnel) and listing of people and bodies to consult
- Development or adaptation of national competition law and complementary texts
- Creation or transformation of useful institutions and bodies (in charge of relaying governmental instructions in the field of competition law, empowered to monitor and control the market; competition authority)
- Implementation of training and information structures and broadcasting of information
- Promotion of international exchanges with international organizations and local authorities in charge of competition law and policy in other countries

MATERIAL:

- Participant's manual for each participant with all the course details, presentations, case studies, and reference material that will be useful after the seminar
- Instructor's guide

ANNEX I (continued)

Course on "The Implementation of a Competition Law and Policy"

OBJECTIVES:	–	Based on the competition law and policy adopted, the seminar will give participants the opportunity to implement, apply and control reforms in the field of competition
TARGET POPULATION:	–	People in charge of political decisions related to the economy: executive officers of economic and trade administrations and their direct deputies
	–	Judges of jurisdictions possibly subject to litigation/disputes
	–	Managers and officers from the private sector
	–	Officers in charge of the application of rules regarding competition policy from various administrations related to the economy, commerce, finance, justice and consumer protection
DURATION:	–	Five days
MODULES:	–	Module 1: Introduction
	–	Module 2: The objectives and economic foundations of competition law and policy
	–	Module 3: Juridical instruments and control tools
	–	Module 4: Institutions in charge of the policy and application of competition law
	–	Module 5: Implementation procedures
MATERIAL:	–	Participant's manual for each participant with all the course details, presentations, case studies, and reference material that will be useful after the seminar
	–	Instructor's guide